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March 4, 2025

VIA ECF

Hon. Alvin K. Hellerstein
 United States District Court
 Southern District of New York
 500 Pearl Street
 New York, NY 10007

Re: United States v. Charlie Javice and Olivier Amar, 23 Cr. 251 (AKH)

Dear Judge Hellerstein:

The government's letter motion purports to clarify its understanding of the Court's ruling with respect to Engineer-1's testimony. ECF No. 309. Far from clarifying the record, the government misconstrues it. In its letter, the government seeks reconsideration of the Court's prior ruling precluding Engineer-1 from testifying that he asked Ms. Javice and Mr. Amar "whether the fake data request was illegal." *See, e.g.*, 03/03/2025 Trial Tr. 1017:2-4, 1017:5-8, 1017:22-23, 1018:23-24. In its filing, the government contends that the Court reversed course, ruling today that "there are no restrictions" on Engineer-1's testimony. ECF No. 309 (citing 03/04/2025 Trial Tr. 1027).

- ***The Court's comment that "there are no restrictions on how the answer[s] will be given" was in reference to Ms. Jennifer Wong's testimony, not that of Engineer-1.*** 03/04/2025 Trial Tr. 1026:6-1027:6. Referring to Ms. Wong, the Court stated:

3	THE COURT: We'll take the testimony outside the
4	presence of the jury, and if it becomes relevant, we'll
5	introduce it at the appropriate time. But meanwhile there are
6	no restrictions on how the answer will be given.

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03/04/2025 Trial Tr. 1027:3-6. Consistent with its ruling, the Court permitted examination of Ms. Wong outside the presence of the jury on the purported prior consistent statement. 03/04/2025 Trial Tr. 1061:14-1075:10. There were no restrictions on Ms. Wong's responses, during which she could not recall Engineer-1 telling her that he asked Ms. Javice and Mr. Amar whether what they had requested of him was illegal. *Id.*

- ***The Court was correct to preclude Engineer-1's testimony on this topic as its probative value is substantially outweighed by the danger of unfair prejudice.*** Yesterday, the Court limited Engineer-1's proposed testimony finding that "the prejudicial element outweighs the relevance." 03/03/2025 Trial Tr. 1017:22-23. Ms. Javice agrees. For the reasons stated yesterday and today, the testimony should be excluded.

For these reasons and those raised stated during argument, Ms. Javice respectfully requests the Court maintain its prior ruling precluding Engineer-1's unfairly prejudicial proposed testimony.

Respectfully submitted,

/s/ Kirsten R. Nelson
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cc: All Counsel of Record

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